
(2012) 09 SC CK 0059

In the Supreme Court Of India

Case No : Civil Appeal No's. 6304-6305 of 2012 (Arising out of SLP (C) No's. 8408-8409 of 2012)

Bhawna Garg and Another

APPELLANT

Vs

University of Delhi and Others

RESPONDENT

Date of Decision : 05-09-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 142, 15, 19(1)

Graduate Medical Education Regulations, 1997 — Regulation 5, 5(2), 5(4)

Citation : AIR 2012 SC 3299 : (2012) AIRSCW 4865 : (2012) 6 AWC 6321
Supp : (2012) 6 AWC 6321 : (2012) 4 JLJR 155 : (2012) 8 JT 618 : (2012) 8
SCALE 504

Hon'ble Judges : Swatanter Kumar, J;A.K. Patnaik, J

Bench : Division Bench

Advocate : Indu Malhotra, Mohit Goel, Sidhant Goel, Chinmayee, Mishra Saurabh, Sakesh Kumar and Anuradha Mutatkar, for the Appellant; Siddharth Luthra, ASG, Ashok Bhan and Nidhesh Gupta, R.K. Rathore, Sushma Suri, Rekha Pandey, Amit Kumar, Rekha Bakshi, Atul Kumar, Avijit Mani Tripathi, Mohinder Jit Singh and D.S. Mahra, for the Respondent

Final Decision : Disposed Of

Judgement

A.K. Patnaik, J.—Leave granted.

2. These are appeals against the common judgment and order dated 23.12.2011 of the Division Bench of the High Court of Delhi in Writ Petition (C) No. 7103 of 2011 and Writ Petition (C) No. 4299 of 2011 declining to grant relief to the Appellants in the matter of admission to the MBBS course in the medical colleges under Delhi University for the academic session 2011-2012.

3. The facts very briefly are that the Delhi University issued a Bulletin of Information for admissions to the Under-Graduate Degree Courses for the academic session 2011-2012 (for short 'the Bulletin'). Para 2 of the Bulletin dealt with admissions to MBBS course. Para 2.1.1 of the Bulletin stated that the

university conducts the MBBS course in three Medical Colleges, namely, Lady Hardinge Medical College (LHMC), Maulana Azad Medical College (MAMC) and University College of Medical Sciences (UCMS). Para 2.1.1 of the Bulletin further stated that only female candidates were to be admitted in LHMC. Para 2.1.2 of the Bulletin stated that candidates for 15% seats were to be selected directly by the Directorate General of Health Sciences (DGHS) based on the result of the examination conducted by the CBSE, New Delhi, as per the directions of this Court. Para 2.1.3 of the Bulletin deals with admissions to seats by Nominees of Government of India (NGOI) and it states that candidates who wish to be considered for admission to this category of seats need not appear in the Delhi University Medical and Dental Entrance Test (DUMET) and they will correspond directly with the authorities listed in Appendix-II to the Bulletin. Para 2.1.6 of the Bulletin furnishes the statement of total number of seats in Under-Graduate Courses for the session 2011-2012. The statement is extracted hereunder:

Name of the Medical College

Seats to be filled in on the basis of DUMET

Seats to be filled in by DGHS

Seats to be filled in by the Government of India Nominees

Total Seats

MBBS Course

General

SC

ST

OBC

15% Quota

NGOI

LHMC

55

19

10

14

22

30

150

MAMC

113

25

12

14

30

6

200

UCMS

66

19

9

34

22

Nil

150

Total

234

63

31

62

74

36

500

The aforesaid statement shows that 30 out of 150 seats in LHMC and 6 out of 200 seats in MAMC in the MBBS course are reserved for NGOI. The aforesaid statement further shows that out of a total of 500 MBBS seats in the three government colleges of the university, 36 seats are reserved for NGOI. The Bulletin further provides that besides the 15% seats directly filled up by the DGHS based on the examination conducted by the CBSE, New Delhi, and the NGOI, all other candidates have to appear in the DUMET and will be admitted to the MBBS course on the basis of their merit in the category in which they have

applied.

4. The Appellants applied as female general category candidates and also took and cleared the DUMET. However, on account of their lower rank in the merit list of candidates who cleared the DUMET, the Appellants could not be admitted to any of the seats in the three government medical colleges under the university. Aggrieved, the Appellants filed Writ Petition (C) No. 7103 of 2011 and Writ Petition (C) No. 4299 of 2011 before the High Court of Delhi praying for a direction to quash the Bulletin insofar as it provides for filling up of 30 seats out of the 150 seats in the MBBS course in LHMC by NGOI and praying for a direction to the authorities to fill up these 30 MBBS seats earmarked for the NGOI for the academic session 2011-2012 from the general category candidates and the Appellants be considered for such admission to the 30 seats as general category candidates. Before the High Court, the Appellants contended that the reservation of as many as 30 seats in the MBBS course in LHMC was violative of Article 14 of the Constitution and that the procedure adopted by the Government of India in nominating the candidates for the 30 seats without holding a common entrance test for determination of their merit was contrary to the Medical Council of India Regulations on Graduate Medical Education, 1997 (for short 'the MCI Regulations').

5. In the impugned judgment and order, the High Court held that in *Kumari Chitra Ghosh and Another Vs. Union of India (UOI) and Others*, Constitution Bench of this Court has considered the challenge to reservation of seats for certain categories of students on the ground that it is violative of Article 14 of the Constitution and has held the reservation to be constitutionally valid. The High Court further held that even though a sea-change may have taken place since the judgment was delivered by this Court in *Kumari Chitra Ghosh (supra)*, it is only for this Court to hold that the ratio of *Kumari Chitra Ghosh (supra)* has become irrelevant. The High Court has also held that as the nominations have already been made by the Government of India to the 30 seats in LHMC in the MBBS course and the nominated students have taken admission and are undergoing the course, it may not be appropriate to disturb their admission. The High Court also found that the Appellant had filed the writ petitions in June, 2011 and writ petitions could not be decided by 30th September, 2011 which was the last date within which admissions were to be made to the MBBS course for the academic session 2011-2012 as per the directions of this Court in *Mridul Dhar (Minor) and Another Vs. Union of India (UOI) and Others*, and hence no relief could be granted to the Appellants after the 30th September, 2011.

6. Ms. Indu Malhotra, learned senior counsel for the Appellants, submitted that the Constitution Bench judgment of this Court in *Kumari Chitra Ghosh (supra)* has lost its relevance inasmuch as the entire procedure for medical admissions has undergone a sea-change during the past four decades after the aforesaid judgment was rendered in 1969. She submitted that the MCI Regulations and in particular Regulation 5 thereof mandates that the selection of students to

medical colleges shall be based solely on merit of the candidate and for determination of merit the criteria laid down in Regulation 5 of the MCI Regulations has to be adopted uniformly throughout the country. She submitted that Regulation 5(2) of the MCI Regulations provides that in States having more than one University/Board/Examining Body conducting the qualifying examination, a competitive entrance examination should be held so as to achieve a uniform evaluation and Regulation 5(4) of the MCI Regulations provides that a competitive entrance examination is absolutely necessary in the cases of institutions of all-India character. She vehemently argued that there are no exceptions provided in Regulation 5 to holding of a competitive entrance examination and even candidates belonging to the reserved categories including the physically handicapped with 70% disability are required to appear in the competitive entrance examination to secure admission to the medical courses. She argued that the Bulletin, therefore, could not have exempted the NGOI candidates from appearing in the DUMET and in fact the Bulletin by so exempting the NGOI candidates from appearing in the DUMET has clearly violated Regulation 5 of the MCI Regulations and on this ground, Para 2.1.3 of the Bulletin providing that candidates who wish to be considered for admission in the category of NGOI need not appear in the DUMET is ultra vires Regulation 5 of the MCI Regulations. She submitted that after the Constitution Bench judgment of this Court in *Kumari Chitra Ghosh (supra)*, the Constitution Bench of this Court in *T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others*, has also emphasized the need for admissions to professional courses solely on the basis of merit even in private unaided colleges that enjoy maximum autonomy in choosing their candidates for admissions under their fundamental right guaranteed by Article 19(1)(g) of the Constitution. She submitted that in *T.M.A. Pai Foundation (supra)*, this Court has also held that the merit of the candidates seeking admission may be determined either through a common entrance test conducted by the University or the Government, followed by counselling. She submitted that LHMC is not a private medical college but a government college and enjoyed much lesser autonomy in matters of admission and admissions to all the 150 seats in LHMC including the 30 seats reserved for NGOI should have only been made on the basis of merit as determined in a competitive entrance examination or a common entrance test. She submitted that contrary to this law which now holds the field, the admission to the seats reserved for the NGOI has been given during the academic session 2011-2012 to four candidates who have even failed in the DUMET examination. She cited a recent judgment of this Court in *Asha v. Pt. B.D. Sharma University of Health Sciences and Ors.* (Civil Appeal No. 5055 of 2012) to the effect that the criteria for selection for admission into MBBS course has to be on merit alone.

7. Ms. Malhotra next submitted that the Appellants are not claiming admissions under the quota reserved for NGOI but they are claiming admission to seats in general pool of candidates on the basis of their merit in the competitive examination. In this context, she submitted that the quota reserved for NGOI

has been taken out from the seats earmarked for the common pool of seats and if admissions to the NGOI quota are held to be illegal then these seats have to be filled up on the basis of their merit amongst the general category candidates. She further submitted that the quota for NGOI is not a reservation under Article 15 of the Constitution and yet as many as 30 out of 150 seats in LHMC have been reserved for the NGOI and this quota is as high as 20% of the total seats. According to her, such reservation when considered along with the reservation of seats in favour of SC/ST/OBC candidates exceeds the ceiling of 50% for all reserved category fixed by the Constitution Bench of this Court in *Indira Sawhney v. Union of India* (1992) Suppl.3 SCC 217 and is unconstitutional. She also relied on the decisions of this Court in *Post Graduate Institute of Medical Education and Research, Chandigarh Vs. Faculty Association and Others, Union of India (UOI) Vs. Ramesh Ram and Others etc.*, and *Indian Medical Association Vs. Union of India (UOI) and Others*,

8. In reply, Mr. Siddharth Luthra, Additional Solicitor General appearing for Union of India, submitted that the Government of India, Ministry of Health and Family Welfare, has issued guidelines for selection of candidates to be nominated for the quota of seats reserved for NGOI and the guidelines would show that the selection is to be based on academic merit of the candidates. These guidelines are contained in the letter dated 09.12.1986 of the Joint Secretary, Ministry of Health and Family Welfare, Government of India, to all the States/Union Territories. He further submitted relying on paragraph 4 of the affidavit of the Union of India filed on 16.07.2012 that the purpose of allotting the seats under the Central Pool Scheme for NGOI is that students from States and Union Territories where there are no adequate medical colleges need support for medical education and wards of Defence/Paramilitary Forces who have sacrificed their lives or have been permanently disabled in war/terrorism also need similar support for medical education. He further submitted that the Central Pool Scheme is run on the basis of voluntary contributions from the States/Union Territories/Ministries/ Agencies for the students nominated by them. He submitted that these seats are only allocated to the beneficiary States/Union Territories/Ministries/Agencies and the allocation letters sent to the States/Union Territories/Ministries/Agencies like the Defence Ministry, MHA, MEA and HRD Ministries contain the guidelines indicating the eligibility and the method of selection to be followed at the time of selection of candidates against the Central Pool Schemes. He explained that the beneficiary States/Union Territories/Ministries/Agencies prepare a list of eligible candidates on the basis of either the State Level Entrance Test or on the basis of academic merit and conduct counselling sessions for the available seats of the Central Pool and after the list of candidates is finalized, the States/Union Territories/Ministries/Agencies inform the successful candidates to report to the medical college in question for admission. He submitted that the Central Government, therefore, has actually no role in preparation of merit list of eligible candidates and its role is confined to only allocating the seats to the States/Union Territories/Ministries/Agencies.

9. Mr. Luthra submitted that the issues raised by the Appellants have been considered by the Constitution Bench of this Court in Kumari Chitra Ghosh (supra) but decided in favour of the Central Government. He submitted that the Medical Council of India has amended the MCI Regulations by the Regulation on Graduate Medical Education (Amendment 2012) and these amended Regulations will be applicable from the academic year commencing from 2013-2014. He submitted that a reading of these amendments to Regulation 5 of the MCI Regulations would show that in order to be eligible for admission in MBBS course for a particular year, it shall be necessary for a candidate to obtain minimum marks in the National Eligibility-cum-Entrance Test to MBBS course held for that academic year and such minimum marks would be 50% for general candidates and 40% for SC/ST/OBC.

10. We have considered the submissions of the learned counsel for the parties and we find that in Kumari Chitra Ghosh (supra) the facts were that in LHMC 23 seats were reserved by the Central Government for students of the following categories:

(a) Residents of Delhi

(b)(i) Sons/Daughters of Central Government servants posted in Delhi at the time of admission.

(ii) Candidate whose father is dead and is wholly dependent on brother/sister who is a Central Government servant posted in Delhi at the time of admission.

(c) Sons/Daughters of residents of Union Territories specified below including displaced persons registered therein and sponsored by their respective Administration of Territory:

(i)Himachal Pradesh; (ii) Tripura; (iii) Manipur; (iv) Naga Hills; (v) N.E.F.A; (vi) Andaman.

(d) Sons/Daughters of Central Government servants posted in Indian Missions abroad.

(e) Cultural Scholars.

(f) Colombo Plan Scholars.

(g) Thailand Scholars.

(h) Jammu and Kashmir State Scholars.

A candidate seeking admission in any of the reserved seats must have obtained a minimum of 55 per cent aggregate marks in the compulsory subjects. This reservation of 23 seats was challenged before the High Court of Delhi as inter-alia violative of Article 14 of the Constitution and the nomination of the candidates to the reserved seats was also challenged as contrary to the rules. The Delhi High Court rejected the challenge and Kumari Chitra Ghosh carried the appeal to this Court. A Constitution Bench of this Court held that the reservation

of 23 seats by the Central Government in favour of specific categories of candidates was constitutionally valid. Paragraph 9 of the judgment of the Constitution Bench of this Court in Kumari Chitra Ghosh (supra) is quoted herein below:

9. It is the Central Government which bears the financial burden of running the medical college. It is for it to lay down the criteria for eligibility. From the very nature of things it is not possible to throw the admission open to students from all over the country. The Government cannot be denied the right to decide from what sources the admission will be made. That essentially is a question of policy and depends inter-alia on an overall assessment and survey of the requirements of residents of particular territories and other categories of persons for whom it is necessary to provide facilities for medical education. If the sources are properly classified whether on territorial, geographical or other reasonable basis it is not for the courts to interfere with the manner and method of making the classification.

Thus, this Court has held in Kumari Chitra Ghosh (supra) that it is for the Central Government which bears the financial burden of running the medical college to take a policy decision on the basis of over all assessment and survey of requirements of residents of particular territories and other categories of persons and the sources from which admissions are to be made in the medical college and so long as the sources are properly classified whether on territorial, geographical or other reasonable basis, the Court will not strike down the policy decision of the Central Government on the ground that it is violative of Article 14 of the Constitution.

11. We may now examine the policy decision of the Central Government in reserving the seats in favour of the NGOI. In the affidavit filed on behalf of the Union of India dated 16.07.2012, it is stated that there are a number of States or the Union Territories which do not have medical/dental colleges of their own and the majority of such States are in the North-Eastern Region and in order to meet the requirements of these States/Union Territories and for some Central Government Ministries/Agencies and to fulfill some national and international obligations, a Central pool of MBBS/BDS seats is being maintained by the Ministry of Health and Family Welfare. Along with the affidavit, a list of beneficiary States/Union Territories/Ministries/Agencies and the distribution of seats of the Central Pool for the academic year 2011-2012 to the beneficiary Sates/Union Territories/Ministries/Agencies has also been furnished, which is extracted hereinbelow:

S.No.

Beneficiary States/UT/Agency

2011-12

MBBS

BDS

1.

Tripura

7

2

2.

Manipur

24

2

3.

Mizoram

27

2

4.

Meghalaya

22

2

5.

Sikkim

8

2

6.

Arunachal Pradesh

26

2

7.

Nagaland

24

2

8.

Lakshadweep

13

2

9.

A & N Islands

18

2

10.

Daman & Diu

7

2

11.

Dadra & NagarHaveli

8

2

12.

J& K

4

2

13.

Ministry of Defence

25

2

14.

Cabinet Secretariat (For SSF, RAW, ARC Dte.)

5

1

15.

Ministry of Home Affairs (for BSF, CRPF, ITBP, CISF, Assam Rifles, SSB Etc.)

7

2

16.

Ministry of External Affairs

(i) For Indian Mission Staff posted abroad.

(ii) For Self financing foreign students

4

26

1

17.

Ministry of HRD (for Tibetan Refugees)

1

-

18.

Indian Council for Child Welfare (for National Bravery Award Winners)

2

-

19.

Ministry of Home Affairs (Civil Terrorist Victims)

2

-

Total:

260

28

The Central Government has, therefore, reserved 260 seats in the MBBS course for the Central Pool and has classified the sources from which admissions were to be made to these 260 seats on geographical and other basis. It has not been shown by the Appellants that the classification of the sources from which admissions are to be made has no rational nexus with the objects sought to be achieved by the policy of the Central Government. Hence, the validity and constitutionality of the policy of the Central Government to reserve some seats on geographical and some other rational basis cannot be questioned. However, reservation of as many as 260 seats may not be justifiable in the changed circumstances discussed hereinafter in this judgment.

12. In fact, the main contention of the Appellants is that the policy of the Central Government to reserve seats in favour of the NGOI is in breach of the principle of selection solely on the basis of merit as laid down by the Constitution Bench of this Court in *T.M.A. Pai Foundation* (supra) and as provided in Regulation 5 of the MCI Regulations. It has, however, been held by the Constitution Bench of this Court in *Kumari Chitra Ghosh* (supra) that where some seats are reserved to be filled up only from properly classified sources, the selection on the basis of merit has to be confined to the sources from which the seats are to be filled up. Relevant extract from Paragraph 10 of the judgment of this Court in *Kumari Chitra Ghosh* (supra) is quoted hereunder:

As noticed before the sources from which students have to be drawn are primarily- determined by the authorities who maintain and run the institution, e.g, the Central Government in the present case. In *Minor P. Rajendran Vs. State of Madras and Others*, it has been stated that the object of selection for admission is to secure the best possible material. This can surely be achieved by making proper rules in the matter of selection but there can be no doubt that such selection has to be confined to the sources that are intended to supply the material.

[Emphasis supplied]

Accordingly, the seats which are reserved for a particular source, i.e., the beneficiary State/Union Territory/Ministry/Agency are to be filled up by selection on the basis of merit of candidates who have applied as candidates of that particular source, i.e., that beneficiary State/Union Territory/Ministry/Agency. Thus, these candidates who constitute separate sources from which admissions are to be made to the seats allocated to the sources are not required to take the DUMET. They must go through the selection on the basis of merit as laid down in *T.M.A. Pai Foundation* (supra) and as provided in Regulation 5 of the MCI Regulations but such selection has to be confined to the candidates of the respective sources.

13. In Annexure - R/3 to the affidavit filed on behalf of the Union of India filed on 16.07.2012, the particulars of the candidates who have been nominated to the seats allocated to the beneficiary States/Union Territories/Ministries/Agencies have been given. It has been stated in Annexure - R/3 that for the 26 seats allocated to the State of Arunachal Pradesh, the candidates were nominated on the basis of Joint Entrance Examination held by the State Government; to the 24 seats allocated to the State of Nagaland, the candidates have been nominated on the basis of Joint Entrance Examination conducted by the State Government; to the 27 seats allocated to the State of Mizoram, the candidates have been nominated on the basis of the State Technical Entrance Examination conducted by the State Government; to the 22 seats allocated to the State of Meghalaya, the candidates have been nominated on the basis of academic merit in 10+2; to the 8 seats allocated to the State of Sikkim, the candidates have been nominated on the basis of common entrance examination conducted by the State

Government; to the 7 seats allocated to the State of Tripura, the candidates have been nominated on the basis of Common Entrance Examination conducted by the State Government; to the 24 seats allocated to the State of Manipur, the candidates have been nominated on the basis of the Common Entrance Examination conducted by the State Government; to the 13 seats allocated to the Union Territory of Lakshadweep, the candidates have been nominated on the basis of Medical Entrance Examination conducted by the Union Territory Government; to the 18 seats allocated to the Union Territory of Andaman and Nicobar Islands, the candidates have been nominated on the basis of marks obtained in 10th (20% weightage) and 12th (80% weightage); to the 8 seats allocated to the Union Territory of Dadar and Nagar Haveli, the candidates have been nominated on the basis of percentage of marks obtained in 10+2; to the 7 seats allocated to the Union Territory of Daman & Diu, candidates have been nominated on the basis of the percentage of marks obtained in 10+2; to the 4 seats allocated to the State of J & K, the candidates have been nominated on the basis of Professional Entrance Examination conducted by the State Government; to the 25 seats allocated to the Ministry of Defence, the candidates have been nominated on the basis of marks obtained in the 10th (20% weightage) and 12th (80% weightage); to the 5 seats allocated to the Cabinet Secretariat, candidates have been nominated on the basis of marks obtained in 10th (20% weightage) and 12th (80% weightage); to the 7 seats allocated to the Ministry of Home Affairs, candidates have been nominated on the basis of marks obtained in 10th (20% weightage) and 12th (80% weightage); to the 4 seats allocated to the Ministry of External Affairs (Mission Staff), candidates have been nominated on the basis of marks obtained in 10+2; to the 26 seats allocated to the Ministry of External Affairs (Foreigners), candidates have been nominated on the basis of marks obtained in 10+2; to the one seat allocated to the Central Tibetan Administration, candidates have been nominated on the basis of marks obtained in 10+2; to the two seats allocated to the Indian Council for Child Welfare, candidates have been nominated on the basis of marks obtained in 10+2 and to the two seats allocated to the Ministry of Home Affairs, candidates have been nominated on the basis of marks obtained in 10+2.

14. The selection of candidates for the seats reserved for NGOI thus has been done either on the basis of marks in the Joint Entrance Examination or marks in the 10+2 examinations. Regulation 5 of the MCI Regulations provides for determining the merit on the basis of marks obtained in Physics, Chemistry, Biology and English in the qualifying examination where one University/Board/Examining Body conducts the qualifying examination or on the basis of a competitive entrance examination where more than one University/Board/Examining Body conducts the qualifying examination. Unless a candidate who had applied to any of the allocated seats and who had not been selected for nomination comes to Court and places materials before the Court to show that the selection has not been made in accordance with Regulation 5 of the MCI Regulations or that his merit has been by-passed while making the selection, the

Court cannot disturb the selection. In this case, the candidates who had applied for the seats allocated to the beneficiary States/Union Territories/Ministries/Agencies have not approached the Court with their grievance that their merit has been bypassed or that the selection has not been made in accordance with Regulation 5 of the MCI Regulations. Instead the Appellants who had not applied for the 30 seats reserved in LHMC for the NGOI have come before this Court with their grievance that they ought to have been selected and admitted to some of those 30 seats. The Appellants, who have not applied for the 30 seats reserved for the NGOI, could not challenge the selection of the candidates to the 30 seats reserved for the NGOI on the ground that merit as provided in Regulation 5 of the MCI Regulations or as laid down in T.M.A. Pai Foundation has not been considered while making selection for nomination of these reserved seats. In taking this view, we are supported by the judgment of the Constitution Bench of this Court in Kumari Chitra Ghosh (*supra*), wherein it has been observed:

...It seems to us that the Appellants do not have any right to challenge the nominations made by the Central Government. They do not compete for the reserved seats and have no locus standi in the matter of nomination to such seats....

Hence, even if some of the students may have been selected for admission to the seats reserved for NGOI not on merit as determined strictly in accordance with Regulation 5 of the MCI Regulations, we are not inclined to disturb their admissions in exercise of our power under Article 142 of the Constitution. However, if there are vacant seats in the two government medical colleges, namely, LHMC or MAMC, for the academic year 2011-2012 out of the quota for NGOI, then the Petitioners should be given admission to these vacant seats on the basis of their merit in the DUMET 2011-2012 during the academic year 2012-2013.

15. The Appellants, however, have contended that 4 candidates, who have been given admission in the seats reserved for NGOI in LHMC and MAMC during the academic year 2011-2012, have even failed in the DUMET and to grant admission to such failed candidates is making a mockery of the entire system of medical admissions. As we have already held, the candidates who have applied for the quota for the seats reserved for NGOI constitute separate sources from which admissions are to be made and the selection on the basis of merit is to be confined to each separate source from which the admissions are to be made and they are not required to take the DUMET. Hence, even if they have failed in DUMET, they are still entitled to be admitted to the seats reserved for NGOI, if they are selected on the basis of merit from amongst all the candidates who have applied from the aforesaid separate sources for admission. Nonetheless, if the candidates who have failed in the DUMET are admitted through a separate source of admission, as in the present case, this may result in lot of heart burn amongst the students who have cleared the DUMET but have not got the admission to a seat in the MBBS course on account of their lower rank in the

merit list. Hence, in future the Delhi University must stipulate in the Bulletin and the Government of India must issue instructions that candidates who opt to take the DUMET but do not qualify will not be eligible for admission to the quota reserved for NGOI. This anomaly, however, has been addressed by the MCI by making amendments to the MCI Regulations and by providing therein that from the academic year 2013-2014 every candidate seeking admission to the MBBS course must obtain a minimum marks of 50% in the National Eligibility-cum-Entrance Test in the MBBS course if he is a general category candidate and must secure a minimum marks of 40% in the National Eligibility-cum-Entrance Test if he is a candidate belonging to Scheduled Castes, Scheduled Tribes or Other Backward Classes. From the academic year 2013-2014, therefore, NGOI applying for the reserved seats will have to secure the aforesaid minimum marks in the National Eligibility-cum-Entrance Test for MBBS course.

16. We may now deal with the contention of the Appellants that the reservations of seats for NGOI in LHMC is excessive and when taken together with the quota of seats for SC, ST, OBC and 15% of all-India even exceeds the 50% ceiling of reservation fixed by this Court. We have perused the decisions in *Indira Sawhney v. Union of India*, *Post Graduate Institute of Medical Education and Research v. Faculty Association and Union of India v. Ramesh Ram and Ors.* (supra) cited by Ms. Malhotra and we find that the aforesaid decisions do not relate to reservations of seats for admission in medical colleges or other educational institutions, but they relate to reservations of posts in favour of SC, ST and Other Backward Classes in public services. We have also perused the decision of this Court in *Indian Medical Association v. Union of India* (supra) cited by Ms. Malhotra and we find that the aforesaid decision holds that in the case of non-minority private unaided professional institutions when the candidates are to be selected from the source of general pool, selection has to be based on inter se rank of students, who have qualified and applied or opted to choose to be admitted to such non-minority private unaided professional institutions, whereas in the case of minority educational institutions the source can be delimited to the particular minority the institution belongs to. The aforesaid decision in the case of *Indian Medical Association v. Union of India* (supra), therefore, has no application to the facts of this case as LHMC is not a private unaided medical college. Instead, it is a college of the Central Government. In any case, the total number of seats in MBBS course in the LHMC is 150 out of which 55 seats are filled up from general candidates on the basis of their inter se merit in DUMET and 22 more seats are filled up by candidates on the basis of their inter se rank in the merit list pursuant to an all-India examination conducted by the CBSE. Moreover, in para 13 of the affidavit filed on behalf of the Union of India on 16.07.2010, it is stated that LHMC had earlier an overall intake of 150 students which has been increased to 200 students from the academic year 2011-2012 and despite the increase of 50 seats, the number of seats for NGOI for the academic year 2011-2012 was fixed at 30. It is further stated in para 13 of the aforesaid affidavit that the seats reserved for NGOI in LHMC has been reduced to

20 during the academic year 2012-2013, to 17 during the academic year 2013-2014 and to 15 for the academic year 2014-2015, as it will be clear from the letter dated 25.04.2012 of the Union of India to LHMC. It is also stated in para 13 of the aforesaid affidavit that while LHMC is a Central Government institution, UCMS and MAMC are institutions controlled by the Government of NCT Delhi and the Government of India cannot demand surrender of seats towards Central Pool and further LHMC is the only college which specializes in medical education for the girl students and the Government wants to propagate medical education among the girls, particularly in the North-Eastern region. Considering the aforesaid steps taken by the Government of India to reduce the number of seats in phases from 30 to 15 for NGOI in LHMC, we think that the grievance that there has been excessive reservation for NGOI in LHMC, if any, has been taken care of. That apart, for students of Delhi, UCMS and MAMC are also other institutions where MBBS course can be pursued by the general candidates including general female candidates and the total number of seats in these institutions are 200 and 150 respectively out of which only 6 are reserved for NGOI.

17. We, however, find that in para 31 of the impugned judgment, the High Court has held that even if there was a justification as offered by the Government of India that many States/Union Territories did not have medical institutions of their own, particularly in North-Eastern States, there has been an overall economic development in the country and a number of State-funded and private medical and other institutions have been established in the meanwhile in the country and, therefore, a re-look by the Government of India at the extent of the seats reserved for the NGOI was necessary. We agree with this view of the High Court in the impugned judgment and we are of the considered opinion that the Central Government should review and find out the number of seats in MBBS course available in the State-funded and the private medical colleges in the States/Union Territories for which seats are being allocated from the quota for NGOI and decide afresh as to how many seats should be allocated to these States/Union Territories.

18. In the result, we:

(i) hold that the Bulletin insofar as it reserves 30 seats in the MBBS course in LHMC for NGOI is not ultra vires the Constitution and in so far it exempts candidates to be admitted to these 30 seats from taking the DUMET is not ultra vires the MCI Regulations.

(ii) hold that the provisions of Regulation 5 of the MCI Regulations for selection for admission to the MBBS course solely on the basis of merit have to be followed by the beneficiary States/Union Territories/Ministries /Agencies while selecting the students who apply for the seats reserved or allocated for the concerned State/Union Territory/ Ministry/Agency.

(iii) hold that even if merit of the applicants may not have been determined

strictly in accordance with Regulation 5 of the MCI Regulations by the beneficiary States/Union Territories/Ministries/Agencies while selecting some of the students for the seats reserved for NGOI for the academic session 2011-2012, we are not inclined to disturb their admissions in exercise of our powers under Article 142 of the Constitution.

(iv) direct that with effect from the academic year 2012-2013, no admission will be made to any of the seats reserved for NGOI in LHMC, MAMC and UCMS of any student who has failed in the DUMET.

(v) direct that for the academic year 2013-2014 onwards, the candidate applying for seats reserved for NGOI have to obtain the minimum marks in the All India National Eligibility-cum-Entrance Test for admission to the MBBS course as provided in the amended MCI Regulations and the admissions will be made on merit after calling for applicants through advertisement in the newspapers having wide circulation.

(vi) direct that the Central Government will make a review of the government and private medical colleges which have been established in the meanwhile in the States/Union Territories to which seats are being allocated under the quota for NGOI and if they find that additional intake capacity for the MBBS course has been created in these States/Union Territories, the Central Government will take a fresh decision on the number of seats in the MBBS course to be reserved for NGOI for these States with effect from the academic year 2013-2014.

(vii) direct that if there are vacant seats in the quota for NGOI in the LHMC and MAMC for the academic year 2011-2012, the Petitioners will be given admission to these vacant seats on the basis of their merit in DUMET 2011-2012 during the academic year 2012-2013.

19. With the aforesaid directions, the appeals are disposed of. There shall be no order as to costs.